



## INTERIOR BOARD OF INDIAN APPEALS

Stone Trucking v. Portland Area Director, Bureau of Indian Affairs

22 IBIA 52 (05/05/1992)

Related Board case:  
19 IBIA 312



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

STONE TRUCKING

v.

PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-125-A

Decided May 5, 1992

Appeal from the disapproval of an expansion grant under the Indian Business Development Program.

Vacated and remanded.

1. Administrative Procedure: Generally--Appeals: Generally--Indians: Generally

Unless otherwise specified, a decision of the Board of Indian Appeals remanding a matter to an official of the Bureau of Indian Affairs restores that official's full authority to consider the matter.

2. Indians: Financial Matters: Financial Assistance

25 CFR Part 286, dealing with the Indian Business Development Program, does not require that a customary lender be a lending institution qualified under the guaranteed loan program in 25 CFR Part 103.

3. Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

Even if a grant application under the Indian Business Development Program is found to be eligible for funding, it is a proper exercise of the discretion granted to the Bureau of Indian Affairs to find that other applications have higher priority under 25 CFR 286.8. Support for this conclusion must, however, appear in the administrative record.

APPEARANCES: Lou Stone, for appellant.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Stone Trucking seeks review of a June 19, 1991, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving its application for an expansion grant under the Indian Business Development Program (IBDP). For the reasons discussed below, the Board

of Indian Appeals (Board) vacates that decision and remands this matter to the Area Director for further consideration.

### Background

Appellant has previously been before the Board concerning this same grant application. In Stone Trucking v. Portland Area Director, 19 IBIA 312 (1991), the Board vacated a decision denying appellant's expansion grant application, and remanded the matter to the Area Director for further consideration. The background of appellant's expansion grant application was fully set forth in the Board's prior decision.

Following remand, the Area Director requested further information from appellant. After considering the information provided, he again disapproved the application, stating:

1. Failure to provide letters indicating that alternative financing unavailable. In our request we asked you to provide two letters of denial from two customary lenders in the area who make loans for similar purposes to determine if you could secure the total financing needed without a grant. We also asked that you advise the lenders about the use of the [BIA's] guaranteed loan program.

You provided two letters of denial, one from the tribal relending program and the second from FPS Development Association.

The tribal relending program is not eligible to make guaranteed loans to its individual members (25 CFR 103.9). A phone call made to FPS Development Association revealed that they provide gap financing - the difference between what a normal lending institution will loan and the total required to finance enterprises - and their limit on funding would not provide sufficient funds to fund your enterprise. In addition their organization would need to be reviewed to determine if they would be an eligible lender under the guaranteed loan program.

In review of the denial letters we concluded that these were not customary lenders who are making loans for similar purposes and that you did not make a bona fide effort to pursue total financing for the expansion of your enterprise.

2. Failure to provide maximum required information on your application.

We requested that you provide an update on your enterprise by providing annual financial statements.

The statements provided contained a number of accounting deficiencies.

The balance sheet did not indicate a difference between current and long term liabilities and there was no depreciation shown on fixed assets. In relation to your income statements there were no provisions made for depreciation and interest expenses. This method of accounting does not meet the requirements of 286.17g(3), 25 CFR and does not provide information needed to analyze the true financial position of your enterprise.

3. Failure to comply with reporting requirements on your first grant you provided incomplete accounting data but did not provide all data required. Please see enclosed reporting requirements that were provided in your approved grant documents.

4. Support that funding should be available either through a direct loan from a customary lender making these types of loans or the [BIA's] guaranteed loan program.

Through our letter of request, you provided your 1989 and 1990 income tax statements. Your tax statements indicate that in 1990 you had a salary of \$50,000 from other employment. In addition, there was income from Stone Trucking Enterprise, a farm enterprise and rental property. With sources of income and the assets associated with the enterprise you should qualify you for a loan or a [BIA] guaranteed loan.

5. Lower priority - the Portland Area Office has on hand grant applications that rank higher in relation to § 286.81, 25 CFR priority status.

We view your action to secure a second grant as inadequate under 25 CFR 286 and for these reasons your grant application is disapproved.

The Board received appellant's notice of appeal from this decision on July 26, 1991. Only appellant filed a brief.

### Discussion and Conclusions

Appellant challenges each of the Area Director's reasons for disapproving its grant application. In addition, appellant contends that the Area Director's reasons numbered 2, 3, 4, and 5 are improper because they were not at issue in the first appeal, and therefore were not part of the Board's remand to the Area Director. The Board will address appellant's second argument first.

[1] Appellant appears to argue that, on remand, the Area Director was limited to consideration of only those issues that were before the Board in the first appeal. The Board's remand established that certain decisions reached by the Area Director in his initial consideration of appellant's expansion grant application were legally incorrect. Because of the seriousness of these issues, the Board determined that remand was

appropriate. However, the only limitation the Board placed on the Area Director's authority to reconsider appellant's application on remand related to the legal conclusions found to be incorrect. The remand otherwise restored to the Area Director his full authority to consider appellant's application.

The Area Director's first reason for denying appellant's application was that it had not supplied two letters of denial from customary lenders in the area making loans for similar purposes. Appellant contends that it was never informed that the tribal credit office and FPS Development Association (FPS) were not eligible lending institutions. The Area Director's decision indicated that neither of these institutions was an eligible lender under the guaranteed loan program established pursuant to 25 U.S.C. § 1498, with regulations in 25 CFR Part 103.

[2] The Board has carefully reviewed 25 CFR Part 286, dealing with IBDP grants. It finds nothing in that part requiring a lending institution to be an eligible lender under the guaranteed loan program in order to be considered a customary lender for IBDP purposes. Therefore, the Area Director's decision that appellant did not supply two letters of denial from customary lenders in the area cannot be sustained.

The Area Director's second reason for denying the grant application was that appellant's accounting method did not meet the requirements of 25 CFR 286.17g(3), and did not provide information needed to analyze appellant's true financial position. Appellant contends that it was never informed of any problems with its accounting method, which it describes as a packaged computer software program.

The Board has examined 25 CFR Part 286, in order to locate section 286.17g(3). It has not found such a section. Furthermore, it has found no section in Part 286 setting forth requirements for accounting methods. The Board assumes that the Area Director's citation was incorrect, and the Board has rarely been unable to locate the appropriate regulation. The incorrect citation, however, resulted in a failure to give appellant notice of what regulation it allegedly violated. This issue must be clarified.

The Area Director's third reason for denial was that appellant had failed to comply with the reporting requirements of its first grant and had provided incomplete accounting data. The Area Director referred appellant to reporting requirements that were allegedly provided with appellant's approved grant documents. <sup>1/</sup> Appellant replies that it has complied with all reporting requirements and has been informed by the Colville Agency Grants Officer that its reporting was complete.

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<sup>1/</sup> 25 CFR 286.22 requires recipients of IBDP grants to furnish "comparative balance sheets and profit and loss statements semi-annually for the first two years of operation following receipt of the grant, and annually thereafter for the succeeding three years."

In reviewing the administrative record, the Board has been unable to locate an analysis of the reports appellant submitted showing in what way they were deficient. Because of this fact, the administrative record does not support the Area Director's decision.

The fourth reason for disapproval was that appellant's owner had sources of income that should have been sufficient to qualify for a loan or BIA guaranteed loan. Appellant notes that it is aware of these other programs, but states that it has applied for a grant expansion, not for a loan or guaranteed loan. Appellant further indicates that the Area Director has presented no substantive analysis of its application.

The Area Director's decision strongly suggests that he believes appellant should have applied for a guaranteed loan rather than an IBDP grant. It appears that the Area Director believed appellant should be able to obtain financing from other sources. This issue was addressed in the Board's first decision. Under 25 CFR 286.17(a), if the Area Director believes that an applicant can obtain financing from other sources, he must require the applicant to supply two letters of denial from customary lenders in the area, who are making loans for similar purposes. 2/ As has been discussed, the Area Director has not shown the letters of denial supplied by appellant to be inadequate. 3/

Finally, the Area Director states that he has other grant applications that rank higher than appellant's under the priorities set forth in 25 CFR 286.8. Appellant argues that he has previously been told that his first appeal caused a "freeze" to be placed on the \$50,000 that he had requested, and that this amount was separate and apart from other grant funds.

[3] The Area Director has discretion within the parameters of 25 CFR 286.8 to assign priorities to grant applications received. This determination is, however, no different from any other determination in the sense

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2/ The Board does not here hold that the mere submission of two such letters requires BIA to find that an application is eligible for a grant. However, it would put on BIA the burden of proving that the applicant could, in fact, receive the total financing needed without a grant.

3/ However, a statement made by appellant in this appeal calls into question the credibility of one of the letters. Appellant states:

"Farwest Finance, Inc. was prepared to fully finance the expansion project (75%) in lieu of 25% being provided in the amount of a grant by the BIA. This would have not required the FPS to participate. However, FPS was willing to provide "gap" financing upon my request as they would provide the credit at less than 10% (over 2% less than the financing to be offered by Farwest Finance, Inc.), all with the blessing of the principal financing of Farwest; both Farwest and FPS agreed that FPS would take the second mortgage position behind Farwest as Farwest requested" (Appellant's Brief at 2). This statement conflicts with the letter from FPS stating that FPS would not provide financing for appellant.

Appellant's statement also appears to concede that appellant would be able to obtain financing from other sources.

that the administrative record must show the basis for the determination. Here, the administrative record contains nothing to support the Area Director's conclusory statement concerning the priority rankings of other pending IBDP applications. The administrative record does not support the Area Director's decision.

Appellant is advised, however, that even assuming its application was found to be eligible for funding, the Area Director's proper decision that he has other applications of greater priority is a legitimate exercise of his discretion in distributing limited grant funds. Appellant has no right to the \$50,000 sought, merely because the Area Director erred in considering its application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Portland Area Director's June 19, 1991, decision is vacated, and the matter is again remanded to him for further consideration. On remand, the Area Director may take into consideration the statements made by appellant in this appeal, including the statement quoted in footnote 3, and may request further information from appellant as necessary to analyze the application fully.

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

I concur:

//original signed

Anita Vogt  
Administrative Judge